IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.116 OF 2002

IN

SUIT NO.3516 OF 1992

Dharmendra Kumar Goyal. ...Petitioner (orig plaintiff).

vs.

Bipinchandra Chimanlal Patel & others. ...Respondents (orig.defendants)

Mr.Rajiv Narulla i/b. J.Narulla & Associates, for Plaintiff/Petitioner

Mr.V.G.Mehta i/b. P.S.Shah, for Respondents/Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 12th January, 2007.

P.C.:-

1. The petitioner has taken out this contempt petition claiming that the respondents have willfully violated the decree passed in Suit no.3516 of 1992. The Court heard the contempt petition on 5.3.2004. It appears from order dated 5.3.2004 that the respondents

have accepted that they have committed contempt of the Court and that they are willing to take certain steps to purge the contempt. The order dated 5.3.2004 passed by the Court reads as under:-

> "After hearing the matter for a considerable time, the learned Advocate for the respondents, upon taking instructions from the respondent no.3 who is present in the court, submitted that the respondents want to submit the account for the period from 6.7.1998 till 3.3.2002 in relation to the rent collected by them and to deposit the said amount in this court within a period of eight weeks from today, to purge the contempt in the matter. Since the learned Advocate for the respondents, on taking instructions from the respondent no.3, has expressed willingness on the part of the respondents to comply with the order dated 6.7.1998, non-compliance of which is complained in the present petition, time is granted accordingly."

Perusal of the above order shows that after the Court heard the parties, the respondents accepted that they have willfully dis-obeyed the orders of the Court and therefore, they are guilty of contempt of the Court and they undertook to take certain steps to purge the contempt. The action they had to take to purge the contempt, according to their own statement is that they will submit accounts in relation to the collection of rent for the period from 6.7.1998 till 3.3.2002 and that they

will deposit in Court the amount collected by them. In view of the above quoted order dated 5.3.2004 the only question that is required to be taken into consideration is that have the respondents complied with their own statement which is recorded in the order dated 5.3.2004. Pursuant to their statement, the respondents have submitted accounts showing what is the amount of rent collected by them from various tenants and they have deposited the amount of Rs.519/- in Court. No affidavit alongwith the statement of accounts was filed. The petitioners have filed an affidavit after the accounts were submitted raising two objections that the accounts submitted are incomplete and that the amount of Rs.25,600/- has been unauthorisedly deducted toward servant charges from the amount collected. In other words, the objection was that the full amount collected was to be deposited in the Court as per the statement and that full amount has not been deposited. Though this affidavit was served on the respondents, they did not file any affidavit. The learned Counsel appearing for respondents submits that the accounts that have been submitted by the respondents are complete accounts. They shows the period for which the rent has been paid by each tenant. Some tenants have paid rent till 1999, some have paid till the year 2001, some have paid till the year 2002 and accordingly, the accounts have been submitted. So far as the deduction of Rs.25,600/- from the amount collected is concerned, the learned Counsel submits that the respondents are

under bonafide belief that they are entitled to deduct that amount, but if this Court finds that they are not entitled to deduct that amount they are willing to deposit the amount in the Court. The learned Counsel therefore, submits that if any mistake was committed by the respondents in complying with their statement recorded in the order dated 5.3.2004 it is a bonafide mistake and therefore, leniency may be shown and they may be given time to comply with that order.

2. I have heard the learned Counsel appearing for petitioner on this aspect of the matter. At the outset it may be pointed out that the learned Counsel appearing for respondents stated that the respondent nos. 1, 2 and 4 to 6 are not dealing with the matter and therefore, for all actions taken it is only respondent no.3 who is liable and responsible.

3. It is clear from the order dated 5.3.2004 that the respondents have accepted that they have committed contempt of the Court, therefore, it is not necessary for me to go into that aspect of the matter. The respondents were to take certain steps to purge the contempt. They were to submit accounts of the rent collected by them from 6.7.1998 till 3.3.2002. Perusal of the accounts that have been submitted by the respondents shows that though it cannot be said that the respondents have submitted accounts only upto the year 2002 as claimed by the petitioner, the accounts submitted by the respondents

cannot be said to be complete accounts in as much as it does not show what is the amount of monthly rent payable, it does not show what is the amount of arrears. If the accounts are to be maintained and furnished, they should contain these details. In any case as the affidavit was filed by the petitioner pointing out that the accounts are not complete, affidavit should have been filed by the respondents clarifying the position, specially, in this case because those accounts were to be furnished by them to purge the contempt of the court that they have committed.

4. So far as the deposit of the amount is concerned, according to the statement, they have collected amount of Rs.38,654/- Out of that amount they paid amount of Rs.12,435/- to the Municipal authority towards taxes. No objection is raised by anybody so far as this aspect of the matter is concerned. According to the statement of accounts, the respondents have paid Rs.25,600/- towards servant charges and has deposited balance amount of Rs.519/- in the Court. However, no details as to how the servant charges are incurred, are to be found in the accounts. According to the statement of the respondents, they were to furnish accounts of collections of rent, therefore, that statement obliges them to give details of every expenditure that they might have incurred in collecting the rent. But no details and no particulars are given as to how the expenditure of

Rs.25,600/- was incurred from the amount of Rs.38,654/- which was recovered towards rent. Therefore, the objection raised on behalf of the petitioner that the statement of accounts submitted by the respondents does not comply with their statement made to the Court, has substance. So, the learned Counsel appearing for respondents submitted that if the submission of statement of accounts in the manner in which it has been done, has taken to be a mistake then it is a bonafide mistake. In my opinion, had it been a bonafide mistake committed by the respondents, after the objection was raised by the petitioner they would have either deposited the amount which was deducted by them immediately or they would have at least filed an affidavit explaining their conduct. The conduct of the respondents of neither depositing the amount even after the objection is raised nor explaining their conduct, in my opinion, shows that the conduct of the respondents was not bonafide. What is to be seen is that no prudent person can spend amount of Rs.25,600/- for collecting the amount of Rs.38,654/-. It is unusual, therefore, it was for the respondents to explain as to why they have adopted this unusual course of action. It is, thus, clear to my mind that the respondents have not complied with their own statement recorded in the order dated 5.3.2004 to purge the contempt, and therefore, as the respondents are guilty of having committed contempt of the Court punishment is to be imposed on them. As the learned Counsel for respondent has stated that it is only

respondent no.3 who is responsible for the acts of the respondents and the other respondents are not responsible, I have to consider what is the punishment to be imposed on the respondent no.3.

5. It is to be seen that there is a decree passed by the Court against the respondents. Pursuant to that decree, a letter dated 4.3.2002 was written by the petitioner to the respondents asking for the list of the tenants and the details about collection of the rent. By their reply dated 13.3.2002 which was given through a lawyer they refused to comply with the requisition. Tone of that letter is complete defiance. Therefore, the petitioner was required to file this contempt petition. At the hearing of the contempt petition, the respondent accepted that they have committed contempt and they agreed to take steps to purge the contempt. As observed above, they did not comply with their own statement. Therefore, in my opinion, it will be appropriate to impose punishment on the respondent no.3. But considering the age of the respondent no.3, in my opinion, it will not be appropriate to sentence him to imprisonment. The respondent no.3 is also agreed to submit the accounts and to deposit the amount collected by the respondents excluding only the taxes that might have been paid from that amount within a period of four weeks from today. In my opinion, imposing of fine will serve the interest of justice. The respondent no.3 is therefore, directed to pay a fine of Rs.2,000/- . The petition is disposed of.